IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1386 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIKANT & RANGNATH KOTALWAR - Appellant(s)
Versus
PARASRAM CHANDUMAL - Defendant(s)

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Appearance :

MR SV RAJU for Appellant(s) : 1,
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/08/2006

ORAL JUDGMENT

1. The present appeal is, at the instance of the appellant – original defendant (hereinafter referred to as “the defendant”), filed

challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 30th January, 1984 passed in Civil Suit No.1606 of 1980 in partly decreeing the said suit directing the defendant to pay to the plaintiff total amount of Rs.5892.70 ps with proportionate costs with running interest at the rate of 9% p.a. on the principal amount of Rs.5176.92 ps from the date of the suit till realization.

2. The plaintiff was a partnership firm, doing business in cloth as a cloth merchant as well as a commission agent, filed the Civil Suit No.1606 of 1980 in the learned City Civil Court, Ahmedabad, for a decree for an amount of Rs.8199.33 ps as principal amount with interest. It was averred in the suit that the defendant used to purchase cloth from the plaintiff on credit from time to time and at the end of 1977-78, an amount of Rs.970.18 ps was due by the plaintiff from the defendant towards the previous dues. It was further averred that the defendant purchased the cloth of the total value

of Rs.64,804.75 ps during the period from 26th November, 1977 to 27th February, 1978 and thus, he was liable to pay total amount of Rs.65,774.93 ps and the defendant paid an amount of Rs.57,575/- upto 3rd October, 1978 and thus, an amount of Rs.8199.33 ps remained due from the defendant. It was further averred that the defendant had agreed to pay interest at the rate of 18% p.a. on the amount of the bill and he was entitled to charge interest at the said rate as per the prevailing practice in the market and therefore, he further claimed an amount of Rs.7634.22 ps as an interest from the defendant. Thus, the plaintiff claimed total amount of Rs.15,850.15 ps.

3. The suit was resisted by the defendant by filing written statement at Exh.28. It was mainly contended on behalf of the defendant that the suit was barred under the provisions of Section 69(2) of the Indian Partnership Act and that the Court has no jurisdiction to entertain the suit as the defendant was residing at Loha, a place

out side the jurisdiction of the learned City Civil Court and as no part of cause of action arose within the jurisdiction of the learned City Civil Court, Ahmedabad. It was further denied that an amount of Rs.970.18 ps remained due and payable by the defendant at the end of the year 1977-78. It was also further denied that he had purchased the goods worth Rs.65,774.93 ps from the plaintiff during the period from 26th November, 1977 to 27th February, 1978 and that he had paid an amount of Rs.57,575/- upto 3rd October, 1978. It was further denied that an amount of Rs.8199.33 ps was due and payable and that he was liable to pay the interest at the rate of 18% p.a. The learned trial Court raised the issues at Exh.31. The plaintiff examined its partner Shri Hirachand Chandumal at Exh.47. The defendant examined himself. On appreciation of evidence, oral as well as documentary, the learned trial Court decreed the suit for an amount of Rs.5892.70 ps towards the principal amount by holding that the plaintiff firm is registered

under the Indian Partnership Act and that the plaintiff has proved that the defendant owes to the plaintiff for an amount of Rs.8199.33 ps for the purchase made by the defendant from the plaintiff. It was further held by the learned trial Court that the defendant had proved that he had paid an amount of Rs.58,931.70 ps only and that the defendant did not agree to pay the interest at the rate of 18% p.a. Being aggrieved and dissatisfied with the judgment and order passed by the learned trial Court, the defendant has preferred the present appeal.

4. The learned advocate appearing on behalf of the appellant is absent. This being an old appeal of 1984, this Court decided to dispose of the present appeal on merits ex-parte. It appears from the appeal memo that the judgment and decree passed by the learned trial Court is challenged on the ground that the learned trial Court has erred in holding that an amount of Rs.5176.92 ps was due and payable by the defendant. It is also challenged on the ground

that the learned trial Court has erred in holding that the defendant had paid only Rs.58,931.70 ps and not Rs.63,571.44 ps towards the suit transaction. It is also further submitted that the learned trial Court ought to have held that Rs.3000/- was paid by the defendant to the plaintiff's partner Shri Hiranand by Bank Draft on 21st November, 1978 and the credit for the same was not given by the plaintiff. It is further submitted that the findings of the learned trial Court with regard to commission charges is also bad in law.

5. It is required to be noted that so far as the dispute with regard to jurisdiction raised by the defendant is concerned, the learned trial Court held that the City Civil Court, Ahmedabad, had jurisdiction to decide the suit. It was also admitted by the defendant that he used to purchase goods on credit from the plaintiff firm. The plaintiff used to maintain defendant's account in its ledger and similarly, the defendant also maintained the plaintiff's

account in its ledger and the defendant is shown to have purchased the goods worth Rs.65,774,93 ps during the period from 26th November, 1977 to 27th February, 1978. It appears from the record of accounts at Exh.48 that the amount of Rs.970.18 ps was carried forward on debit side as the amount due from the defendant at the end of the previous year and the defendant is further shown to have made purchase on credit of the total amount of Rs.64,804.75 ps. Thus, the total amount on the debit side was shown as Rs.65,774.93 ps in the plaintiff's ledger at Exh.48. It appears that whenever there was a dispute, it was shown to the plaintiff that certain amounts were not credited in the defendant's account at Exh.48 and by purshis the plaintiff agreed to credit the same and after deducting the credit, an amount of Rs. 6601.92 ps was due and payable. Thus, after considering the credit, etc., the plaintiff pressed its claim only for an amount of Rs. 5176.92 ps. It has come on record that the defendant did not credit in his account book the entire amount of

plaintiff's bill Exhs.35 to 38. It is required to be noted that by joint purshis at Exh.46 the defendant accepted the amount of bill Exhs.35 to 38. Considering the fact that the defendant did not even credit the amount of Rs. 2663.68 ps of the bill No. 272 dated 20th February, 1978 and adding the difference of amount of bills at Exhs.35 to 38, the learned trial Court has come to the conclusion that the defendant purchased the goods worth Rs.65,703.05 ps. So far as the amount of Rs.3000/- alleged to have been paid to the partner is concerned, on going through the evidence on record and the Rojmel Entry Nos.82 and 87 and other entries, the learned trial Court has rightly held that the said amount of Rs.3000/- was paid to the plaintiff. Now, considering the various entries, the findings of the learned trial Court with regard to payment of commission charges to the plaintiff, is also just and proper. The learned trial Court did not accept the contention on behalf of the plaintiff that the defendant has accepted to pay the interest at the rate of 18% p.a. and considering

the above, the learned trial Court directed to pay the interest at the rate of 9% p.a. only. Thus, the learned trial Court held that an amount of Rs.5176.92 ps was due and payable towards the principal amount and Rs.715.78 ps as interest and apparently, passed a decree for an amount of Rs.5892.70 ps. On considering the entire evidence on record as well the evidence discussed hereinabove, this Court is in complete agreement with the reasoning and findings of the learned trial Court in partly decreeing the suit and directing the defendant to pay an amount of Rs.5892.70 ps with interest at the rate of 9% p.a. No illegality has been committed by the learned trial Court.

6. For the reasons stated above, there is no substance in the present appeal and the same is required to be dismissed and is, accordingly, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Interim relief, if any, granted earlier, stands vacated forthwith.

(M.R.SHAH, J.)

kdc.